

Libby Community Advisory Group

Meeting Summary

June 12, 2008

Introductions

The members of the Libby Community Advisory Group (CAG) and its facilitator, Gerald Mueller, introduced themselves.

Agenda

The CAG agreed to the following agenda for this meeting:

- May 8, 2008 meeting summary
- Mayor Berget's report
- Windom presentation
- Libby Community-Based Research Initiative
- Joan Miles questions
- State W.R. Grace Settlement Agreement
- Agency reports
- Busby presentation
- Public comment

May 8, 2008 CAG Meeting Summary

The CAG made no changes to the May 8, 2009 summary.

Comment by DC Orr - In commenting on the April summary at the last meeting, Clinton Maynard and I were trying to note false statements by EPA.

Mayor Berget's Report

At the CAG's request, Mayor Berget appeared at this meeting to answer questions about the \$8 million Economic Development and Infrastructure Fund (Fund). Red Busby passed out a copy of the latest Cash Report and Detailed Ledger Query for it.

Audience Member Question - Who is Myrna Shilling?

Answer - One of the recipients of the Fund was the Flathead Community College for its building program in Libby. Ms. Shilling handled administration of the funds on behalf of the College.

Audience Member Question - What is the status of the loan to the golf course?

Answer - The Country Club has received the total amount allocated to it.

Audience Member Question - Was the Country Club charged interest on its loan?

Answer - The best way to get an answer is to review details of the loan agreement, which is public.

CAG Member Question - At the last meeting, we were told that the County Club loan will be repaid as lots are sold. How many lots have sold?

Answer - No lots have sold. However, repayment is required by a certain date regardless of lot sales.

CAG Member Question - How long is this period?

Answer - I would have to look at the loan document.

CAG Member Comment - It is customary for banks to make short-term construction loans due and payable by certain date.

Response - The \$8 million was provided to the city to support community economic development and infrastructure. Bill Crismore selected a committee, the Libby Area Development Corporation (LADC), with a membership representing a cross section of the community, to decide the recipients of grants and loans from the Fund. I supported some of the decisions of this committee and did not support others. LADC's decisions were ratified by the City Council. The committee heard that people would travel up to 50 miles to play nine holes of golf and 250-300 miles to play eighteen holes. The LADC funding paid for the second nine holes, not for the residential development around the course. The City's use of this fund is audited and information about it is available to the public.

Audience Member Comment - There were no strings on the expenditure of this fund.

Audience Member Question - Why are decisions about allocation of the Fund now in the City's hands rather than the committee?

Answer - The money was given to the City from the start. The City decided that LADC was the best approach to allocate the funds. LADC loaned \$1 million to the City for infrastructure development. There was some infighting on the committee regarding funding to the CARD Clinic and the VFW. The City overruled the LADC and provided money to the CARD and VFW.

Audience Member Question - So the City took back control of the Fund because of infighting?

Answer - LADC was not dissolved. The City did not follow LADC's recommendation regarding the CARD and VFW.

CAG Member Question - We are not making an accusation that these funds have been misappropriated. We are, however, interested in seeing that asbestos disease victims get the medical care they need. Could some of the \$8 million be used as a seed for a medical care fund?

Answer - The community decided that these funds should be used for economic development and infrastructure. Although most of the original \$8 million has been dispersed in grants or loans, the City wants the Fund to be rebuilt as loans are repaid so it can support new economic activity. The Fund was used to support both the CARD and the Community Health Center.

CAG Member Question - So there is no moratorium on use of the Fund?

Answer - Correct. As I said, however, the City wants to rebuild it.

CAG Member Question - Is the \$1 million loaned to the City for infrastructure being repaid?

Answer - The City is paying back the loan.

CAG Member Question - How many of the loans from the Fund have defaulted?

Answer - The loan to Libby Wood Works is in default. The Amish who received this loan have asked to work out what they owe. They are putting more into the pavilion than their loan amount. A couple of other loans are not being repaid. The City needs to talk with them about payment.

CAG Member Question - Did the Memorial Center receive a grant or a loan?

Answer - They received \$600,000 in a grant and \$600,000 in a loan.

CAG Member Question - Did the Memorial Center loan include an interest rate?

Answer - They are repaying in perpetuity.

Audience Member Question - This community needs funding for asbestos disease-related health care. I have argued that we need a medical trust fund, a bucket into which money could be put. How much of the \$8 million remains? Could the remainder be used to start a medical trust fund?

Answer - About \$200,000 is available, but loans are being repaid. This would be a small amount compared to what is needed for health care.

Audience Member Comment - I have asbestos-related disease. As it progresses, breathing becomes more difficult. I had to retire and cannot work any more, so my income is fixed. The disease impacts more than just immediate health care costs. For example, I must now pay someone else to do home repairs that I can no longer do myself. Even a small amount of funding would help me pay my bills.

CAG Member Comment - The City Council decided that the \$8 million should be used for economic development and infrastructure to enhance the community economy. The Fund cannot be used to provide better health care. We need to put pressure on our local officials and Congressional delegation to provide funding for health care. We have not been successful yet, but we need to try harder.

CAG Member Comment - W.R. Grace is the appropriate source to fund a trust fund. We should seek funding through the bankruptcy proceeding.

Windom Presentation

Commissioner Rita Windom reported on conversations she recently had with Bill Corcoran of W.R. Grace regarding a medical trust fund. She read the communication from Mr. Corcoran regarding the \$3 billion trust fund which has been proposed in the W.R. Grace bankruptcy. The communication is in Appendix 2. Commissioner Windom stated that once the trust fund is approved by the bankruptcy court, people will be able to file claims against it. The claim form will be posted on Lincoln County's web page. Because the trust proceeds will be available to claimants on a first-come, first-served basis, she urged people to assemble the information for the claims now.

Commissioner Windom also said that she discussed with Mr. Corcoran the agenda for the June 20 meeting in Libby with HNA regarding the W.R. Grace Medical Plan (Plan). HNA administers the Plan. She stated her displeasure with the proposed agenda for the meeting and asked that HNA send some one other than Dr. Flynn to the meeting. HNA will send a nurse practitioner to meeting to provide an overview about what HNA will pay pursuant to the Plan.

CAG Member Comment - The \$3 billion trust fund established through the bankruptcy would compensate people for injuries suffered because of asbestos-related disease and will not pay for

health care.

Audience Member Question - Who will control the trust?

Answer by Commissioner Windom - I do not know, but I will try to find out.

Audience Member Question - Will the claim form be available at the County Commissioners' offices?

Answer by Commissioner Windom - No. It will be available on the county's web site.

Audience Member Comment - Johns Manville went through a similar procedure, establishing a trust fund to compensate people exposed to asbestos as a result of the company's products. Some 150,000 people filed claims against this company. The trust fund ended up paying claimants only about \$5,000 each. The W.R. Grace \$3 billion trust fund would address all asbestos-related claims against W.R. Grace nationwide and will not address Libby's need for health care.

Libby Amphibole Health Risk Initiative

Ted Linnert introduced officials from the Agency for Toxic Substance Disease Registry (ATSDR) and EPA Headquarters in Washington DC who came to this meeting to discuss the Libby Amphibole Health Risk Initiative (Initiative). They included Dr. Howard Frumkin, Dr. Dave Williamson, and Ted Larson from ATSDR and Barnes Johnson and Doug Amon from EPA Headquarters. Dr. Frumkin and Dr. Williamson discussed the Initiative.

While much is known about the effects on humans of the exposure to high levels of asbestos, more needs to be learned about low level exposure effects, asbestos-related disease history, and possible implications for autoimmune disease. The CARD Clinic has good capacity now for collecting data and providing medical care. The Initiative is designed to allow the local health care community to partner with a top university or universities to conduct research on the following topics:

- Studies that compare the health status and conditions of people who were exposed to Libby asbestos in childhood to the health status and conditions of people who did not have such exposure.
- Expanded evaluation of Libby residents who were exposed to the asbestos, including those who had lower levels of environmental exposure to the Libby asbestos.
- An assessment of whether the adverse health effects of exposure to Libby asbestos extend beyond lung disease.
- Strengthening existing public health tracking systems (e.g., the State Cancer Registry) and patient health record databases in order to better link exposure information to health conditions and outcomes.
- Continuation of a study by ATSDR and the National Institute for Occupational Safety and Health (NIOSH) that compares film and digital chest x-rays in an effort to determine which is best for assessing the status or conditions of lungs.

The Initiative will establish a field office in Libby so that the university research personnel can work with the people here to ensure that the research is responsive to the needs of this community. Funding for the Initiative will be \$8 million over five years. The university or consortium of universities will be selected via a transparent and fair competitive solicitation. The university or

consortium selected will be a good listener with the best process for community input. A request for proposals will be issued in a couple of months, and research will begin by the end of this year or the first part of next year. Some research results are expected within two years.

The Initiative provides an important opportunity for the Libby community to prioritize what is important to the Libby community and particularly for the medical providers to coalesce around what resources are needed here.

The five year program for the Montana Asbestos Screening and Surveillance Activity (MASSA) which has been funded by MASSA is due to end this September, but the State of Montana has asked that it be extended by three months, and this extension may be granted.

Audience Member Comment - Thank you for coming here. \$8 million is a lot of money, but it is not nearly enough. Libby has the population exposed to asbestos. We need a research center here to look closely at asbestos-related disease and treatments for both Libby and the nation. We need more like \$75 million rather than \$8 million over five years.

Audience Member Question - How much money is now being spent on research on mesothelioma?
Answer - I don't know.

Audience Member Comment - State and local government failed us. We need health care and quality medical insurance or else the research will be worthless.

Response - The Initiative will provide research targeted at relieving suffering and should translate into improved health care. As a doctor, I hate the fact that quality health care is not available here and throughout the nation. The \$8 million will allow good research work.

Audience Member Comment - A representative of the university selected for this work should serve on the CAG.

Response - This is a good idea.

Audience Member Comment - Exposure to asbestos caused by W.R. Grace is not just a Libby problem. Processing plants and commercial products caused exposures in many more places than Libby.

Audience Member Question - Will the research address cures for asbestos-related disease?

Answer - Maybe. The initial program includes the five elements we already described, but the researchers may pursue others. The research targets now include how asbestos exposure affects the immune system and the course of disease over time. Understanding the latter will help us determine how to test for the disease. While the research may not result in a cure, it may identify ways to relieve suffering and improve the quality of life of people with the disease.

Audience Member Comment - Senators Baucus and Tester need to understand this community's need for health care.

Audience Member Comment - \$8 million over five years sounds like stalling that will allow more people to die. We don't need more research, we need health care.

Response by Dr. Black - Medical care is a huge issue. While it will not address health care needs, the \$8 million of research will be valuable. It will look at disease mechanisms and how the disease changes. It may identify possible treatments.

Audience Member Comment - It is commonly known that the general population of America enjoys a longer life span when people have quality health care. This needs to be translated to the population exposed to asbestos. Quality health care will extend their life span as well.

Response - Health care is needed, but the Initiative research will also provide benefits.

Audience Member Comment - Some \$168 million has been spent on the cleanup of this community which began 8 years ago. Funding to provide health care for people with asbestos-related disease has not been provided. The federal government needs to be held accountable for its actions.

CAG Member Question - St. John's Hospital and CARD have been doing a good job. How would more insurance or other help paying for health care, help you personally?

Answer by Audience Member - I recently had a CAT Scan that indicated I have plural plaque. I am at risk for developing mesothelioma. People who had an occupational exposure to asbestos here in Libby have a 6% death rate. People exposed to asbestos here via ambient air have an increased risk for mesothelioma. No cure exists for mesothelioma; treatment amounts to making the patient more comfortable. A diagnosis of this disease amounts to a death sentence in six to eighteen months. Mesothelioma research needs more funding. We also know that asbestos exposure causes a higher incidence of other cancers.

CAG Member Comment - We need both funding for additional research and to provide medical care.

Audience Member Comment - Dr. Whitehouse is this community's only pulmonologist. He will need to be replaced when he retires.

Joan Miles Questions

Bill Patten stated that after Joan Miles, Director of the Montana Department of Public Health and Human Services, visited Libby, he sent to her an email message including the following questions:

- You said that you would "take our story to the Governor." Do you have specific thoughts or suggestions you plan to present to him?
- Do you see our situation as public health issue in which your department should be involved? If so, how?
- What suggestions/recommendations do you have for our group? Are there specific requests that you think we should be making/researching?

Mr. Patten described Director Miles' response to his questions as non-specific. Mr. Patten's message and Director Miles' response, which Mr. Mueller circulated to the CAG email lists prior to this meeting, are included in Appendix 3.

CAG Member Comment - Dr. Black also wrote to Director Miles after her visit. He has not yet received a reply, so he wrote to her again.

Comment by Gerald Mueller - I will bring this up again at the next meeting to see if Dr. Black has received a reply and ask the CAG if it wants to take additional action.

State W.R. Grace Settlement Agreement

Catherine LeCours summarized the proposed settlement in the W.R. Grace bankruptcy for the claims by the State of Montana against W.R. Grace regarding the Libby Superfund site, with the exception of the mine, Operable Unit 3. Mr. Mueller circulated a press release announcing the proposed settlement and the draft settlement agreement to the CAG email lists prior to this meeting. Copies of these documents are available on the DEQ web site at www.deq.mt.gov. The amount of the proposed settlement is \$5,167,000. Under the proposal, DEQ could use these funds only for CERCLA costs, including the state's 10% cost share and operation and maintenance costs. A 30-day comment period on the proposed settlement ends on July 7, 2008. DEQ attorney, Bill Kirley, was available to answer questions via the telephone.

Audience Member Question - Will these funds be put in an interest bearing account until they are expended?

Answer - Yes. They will be put in a fund administered by the Montana Board of Investments. The fund will probably earn an interest rate greater than the EPA \$250 million fund.

CAG Member Comment - I have no issue with the state's proposed settlement, but it will not address this community's health care needs.

CAG Member Question - Is the \$5.167 million restricted to operation and cleanup costs?

Answer - No. The settlement funds will be available for whatever the state needs related to Superfund at this site, with the exception of the mine which is not included in the settlement.

Audience Member Comment - To date, EPA has spent \$168 million for cleanup costs. Settling for \$5 million is too small of an amount.

CAG Member Comment - If the cleanup eventually costs \$500 million, then as a result of the federal \$250 million and the state \$5 million settlements, there will be no money left for operation and maintenance.

Response - The state is committed to paying for operation and maintenance. Assumedly, if EPA pays more for remediation, then the costs of operation and maintenance should be reduced.

CAG Member Comment - One of the consequences of the federal and state settlements is a change in responsibility for the cleanup. After the settlements, responsibility will shift from W.R. Grace to the federal and state governments.

CAG Member Comment - We should ask that the state reserve the \$5 million to pay for operation and maintenance.

CAG Member Question - Pursuant to the federal settlement, EPA cannot recover additional expenditures to cleanup attics. Is this also true for the state settlement?

Answer - The proposed state settlement is written to give the state more leeway in how it spends

the \$5 million.

Audience Member Comment - According to the federal settlement, EPA will spend \$250 million on cleanup and operation and maintenance of the Libby site, excluding the mine. The state's 10% share of this amount would be \$25 million. The \$5 million settlement amount is not adequate.

Response - The state's 10% obligation will be on expenditures above \$239 million. The state's cost share obligation does not begin until a record of decision (ROD) for the cleanup is in place.

CAG Member Comment - If the state does not incur a cost for operation and maintenance, the unused portion of the \$5 million should revert to the community.

Audience Member Question - What is the definition of the area for which the settlement funds could be spent? Could it include Eureka?

Answer - The proposed agreement starts with the EPA boundaries but is flexible. The language in the agreement defining the area is as follows:

Libby Asbestos Site" or "Libby Site" shall mean the Zonolite Mine and all areas (including any structure, soil, air, water, sediment, or receptor) in or near Lincoln County, Montana, that have been contaminated by natural or human caused migration of hazard substances and/or pollutants or contaminants from such property, including, but not limited to, the mine property, the Kootenai River and sediments therein, Rainey Creek, Rainey Creek Road, and areas in which tree bark is contaminated with such hazardous substances, and/or pollutants or contaminants.

Answer by Paul Peronard - We have the ability to change the site boundary and have done so. The area can be where the contamination from the mine takes you.

Comment by Bill Kirely - Comments can also be submitted by the deadline via email.

CAG Action - Those CAG members present agreed to ask Bill Patten and Tanis Hernandez to draft a letter to DEQ commenting on the draft settlement as follows:

- Settlement funds should be spent only on operation and maintenance costs at the Libby site;***
- Unused settlement funds should be given to the Libby community; and***
- The state needs to be aware of the Libby community's need for health care resulting from asbestos-related disease.***

Once drafted, the letter will be circulated to CAG members via email. The final letter will be available at St. John's Lutheran Hospital for CAG member signatures. The letter will be emailed and mailed to DEQ prior to the July 7, 2008 deadline.

EPA Report

Because of time constraints, Paul Peronard reported briefly on behalf of EPA on the following two topics. Mr. Peronard also stated that he was asked to present at this meeting reports on the golf course and Asa Wood school cleanups but there is not enough time at this meeting to do so. These reports will be given at the July CAG meeting.

Cleanup Contractor Problems - EPA has received several complaints about the work of one of its contractors. EPA has issued a cure notice to this contractor and has taken away a task order from it.

Cleanup Progress - Thirteen properties have been completed so far this year. Next week a new task order will be issued.

State Report

Catherine LeCours reported on behalf of DEQ that the investigations of the Troy properties began last week and will be completed this year.

Busby Presentation

Red Busby reported on his meeting with Bill Patten regarding the expenditure of the \$250,000 annual payment by W.R. Grace to St. John's Lutheran Hospital. Mr. Patten agreed to form a committee to provide input to the Hospital about expenditure of these funds. Tanis Hernandez has agreed to be a member on behalf of the CARD Clinic. Mr. Busby invited anyone wishing to serve on the committee, particularly asbestos victims, to do so. Interested people can call him at 293-7283. This committee will discuss what additional programs are needed for asbestos victims and concerns about a decrease in services to them. The first meeting of the committee will be on Tuesday, August 12 from 7 - 8:30 p.m. at the Hospital.

Public Comment

Audience Member Question - Does the CAG believe that Libby needs a medical trust fund?

Response - We need a trust agreement, a trust administrator, and a bank account to hold trust funds.

Audience Member Comment - I call on the CAG to work on creating a medical trust fund.

Audience Member Question - Isn't the \$1.5 million appropriated in 2007 by the state legislature to the Libby Asbestos Medical Plan (LAMP) a beginning of a trust fund?

Answer by LeRoy Thom - I will report on the status of LAMP funding and restrictions on its expenditures at the next CAG meeting.

Next Meeting

The next regular CAG meeting is scheduled for 7:00 to 9:00 p.m. on July 10, 2008 in the Ponderosa Room of Libby City Hall. The agenda will include four topics: reports on the golf course and Asa Wood school cleanups, follow-up on Dr. Black's letter to Joan Miles, a report on the status on LAMP, and the letter which DC Orr is drafting to Montana's Congressional delegation and Governor Schweitzer regarding the CAG's letter to EPA Secretary Johnson and Susan Bodine's reply on behalf of the Secretary.

Appendix 1
CAG Member & Guest Attendance List
June 12, 2008

Members	Group/Organization Represented
K.W. Maki	Libby Schools
DC Orr	Libby Community
Philip Erquiaga	EaglesVoice.com
Rita Windom	Lincoln County Commission
Ted Linnert	Environmental Protection Agency (EPA)
Trent Oelberg	Libby Main Street
Mike Cirian	EPA
Catherine LeCours	Montana Department of Environmental Quality
Paul Peronard	EPA
Mike Gieseey	CARD
Dr. Brad Black	Lincoln County Health Officer
Gary D. Swenson	Libby Volunteer Fire Department
Eileen Carney	Board of Respiratory Care
Bill Patten	St. John's Lutheran Hospital
Philip Erquiaga	48 Degrees North
LeRoy Thom	Former Grace Employee
 Visitors	
Marianne Roose	Lincoln County Commissioner
Dr. Howard Frumkin	ATSDR
Dr. Dave Williamson	ATSDR
Ted Larson	ATSDR
Barnes Johnson	EPA Headquarters
Doug Amon	EPA Headquarters

Appendix 2

Communication from Bill Corcoran

June 11, 2008

Once a Trust commences operations, all claims are processed and paid in accordance with the Trust Distribution Procedures. Asbestos Trust Distribution Procedures typically set forth that claims are processed and reviewed on a first in/first out basis in the order in which The Trust receives them or a pre-petition lawsuit was filed against the Debtor. Claims are generally **paid** in the order in which they are received, evaluated and approved for payment.

Generally, to qualify for payment, claimants must submit credible medical and exposure evidence through completion of the Trust Claim Form, the contents of which will be negotiated and included in The Trust Distribution Procedures.

In the typical Trust Distribution Procedures, diagnoses of non-malignant asbestos-related diseases must be based upon a physical examination of the claimant by the diagnosing physician or by a pathology report. In mesothelioma, Lung cancer and Other Cancer cases, the diagnosis must be (1) based upon a physical examination by the diagnosing physician or (2) by a board certified pathologist. In cases involving deceased claimants alleging non-malignant disease, a physical examination is not required if ILO readings of 2/1 or pulmonary function test results are submitted.

If a Claimant is qualified and elects to file a claim, he or she must file the approved Trust Proof of Claim Form with supporting documentation to the Trust. Currently, most existing trusts encourage claimants to file claims electronically in order to expedite and simplify claims administration. While hiring an attorney is not required in order to file a claim with the Trust, many claimants hire counsel to assist in the claims process and most existing Trusts permit attorneys to file claims in bulk.

Appendix 3

From: Bill Patten [<mailto:bpatt@sjlh.com>]
Sent: Thursday, May 01, 2008 5:28 PM
To: Miles, Joan
Subject: Question

Dear Joan:

Just a quick note to once again thank you and your team for taking the time to visit us in Libby. I trust you found the visit to be a good use of your time.

As the CAG works on a concrete "moving forward" strategy, I was hoping you could give me specific guidance as to the role your agency and/or the State might be able to take regarding the need to fund asbestos exposure related healthcare in our community. Specific questions I will appreciate your thoughts on include:

- You said that you would "take our story to the Governor." Do you have specific thoughts or suggestions you plan to present to him?
- Do you see our situation as public health issue in which your department should be involved? If so, how?
- What suggestions/recommendations do you have for our group? Are there specific requests that you think we should be making/researching?

Any other thoughts or direction will be most appreciated!
Thanks again!
Bill Patten

From: Miles, Joan [<mailto:JMiles@mt.gov>]
Sent: Wednesday, May 21, 2008 11:34 AM
To: Bill Patten
Subject: RE: Question

Hi Bill. I'm sorry for the delay in getting back to you....and even then, this is a brief answer. I have been trying to get some time to meet with the Governor's staff and DEQ to relate our visit and discuss the issues as we saw them the day we were in Libby. I appreciate your specific questions below, because I can incorporate this into our discussion and hopefully can give you some feedback after we meet. At this point, we have a meeting set up for mid-June.

As you know, this is a complicated situation with the roles of EPA and DEQ involved, as well as the settlement, pending lawsuit, etc. I hope we can arrive at a unified approach within state government as this moves forward.

I will keep you posted. Thanks again for all the time people took to meet and discuss issues with us in April.

Sincerely,
Joan